

REMARKS

Claim 1 has also been amended by incorporating the subject matter of claim 13 into it. Accordingly, claim 13 has been canceled.

Claims 1, 2, 5, 7-10, 12 and 14-47 are currently pending, although claims 7-9, 17-19 and 44-46 have been withdrawn from consideration. Upon indication of allowable subject matter, Applicants intend to seek rejoinder of withdrawn claims as appropriate.

The Office Action also rejected the pending claims as obvious under 35 U.S.C. § 103 over U.S. patents 6,294,112 (“Clarke”), 6,123,952 (“Lagrange”) and 6,369,147 (“Polonka”). In view of the following comments, Applicants respectfully request reconsideration and withdrawal of this rejection.

The claimed invention relates to compositions containing, in a physiologically acceptable medium, both a naphthopyran derivative compound of formula (Ia) or (IIa) photochrome which has a difference in hue ΔE between its excited state and its unexcited state at least equal to 5 and a goniochromatic coloring agent. As demonstrated in the examples of the present application, such compositions can provide a novel dynamic effect in terms of color and radiance. For example, the invention compositions can reversibly change color within a very short period of time after exposure to UV radiation or cessation of such exposure. Such compositions can also compensate for the color alteration phenomenon which is generally associated with poor behavior of conventional pigments with respect to sebum. The art upon which the Office Action has relied neither teaches nor suggests the claimed invention, or any of these benefits associated with the invention compositions. In

short, the invention compositions and their benefits could not have been expected from the combination of references applied in the Office Action.

More specifically, the applied art does not teach or suggest using the claimed photochromic compounds in a cosmetic composition. What's more, the applied art does not teach or suggest compositions containing both of the required colorants in a single composition, or any of the benefits associated from combining these two colorants in a single composition.

First, none of the applied art teaches or suggests compositions containing the required photochromic naphthopyran derivative compound of formula (Ia) or (IIa) in a physiologically acceptable medium.

Clarke neither teaches nor suggests cosmetic compositions. More importantly, Clarke neither teaches nor suggests compositions containing at least one photochromic compound in a physiologically acceptable medium as required by the pending claims. Rather, Clarke states that his compounds are useful for incorporation into polymeric hosts to produce non-physiological compositions such as sunglass lenses, ophthalmic lenses, car windows, aircraft windows, etc. (Col. 4, line 30 et seq.). Thus, Clarke provides no motivation whatsoever to produce a composition containing at least one photochromic compound in a physiologically acceptable medium. Instead, Clarke is directed to completely different subject matter.

Lagrange states that his compositions contain photochromic compounds which are diarylethene derivatives, not naphthopyran compounds. In fact, Lagrange discloses very structurally different photochromic compounds from those of the present invention. Thus,

Lagrange neither teaches nor suggests compositions containing the required photochromic compounds in a physiologically acceptable medium.

Polonka discloses goniochromatic compounds. Thus, Polonka neither teaches nor suggests compositions containing the required photochromic compounds in a physiologically acceptable medium.

Clearly, none of the applied art teaches or suggests the required photochromic compounds in a physiologically acceptable medium.

Second, none of the applied art teaches or suggests compositions containing both of the required colorants in a single composition, or any of the benefits associated from combining these two colorants in a single composition. To the contrary, all of the applied art is deafeningly silent concerning the use of any materials disclosed therein in a single cosmetic composition.

This failure to even suggest a single cosmetic composition containing both required colorants is particularly important given the combination of two the two colorants results in improved color benefits as described in the present application.

Finally, no *prima facie* case of obviousness has been set forth because no motivation to combine the applied art in the required manner to yield the claimed compositions would have existed.

Clarke relates to a field other than cosmetics and, thus, would not have been considered when formulating a cosmetic composition. Similarly, Polonka focuses on corrosion resistant pigments useful in painting or coating compositions. (Col. 2, lines 52-54; col. 6, line 48). One of ordinary skill in the cosmetics arts, seeking to produce a cosmetic

composition including a physiologically acceptable medium, would not have turned to Clarke and Polonka for guidance. For at least this reason no motivation to combine would have existed.

Moreover, both photochromic compounds and goniochromatic compounds rely upon a light source to achieve their effect. (See, for example, col. 1, lines 7-16 of Polonka). Nothing in any of the applied art would have led one of ordinary skill in the cosmetics art to use these two different types of compounds, both of which were reliant upon a light source to achieve their individual effects, in the same composition -- nothing in the applied art would have suggested the effect that such a combination would have or even whether a useful product could be obtained under such circumstances.

In summary, the present invention requires the presence of two specified colorants in a single composition. As explained in the present application, this combinations yields unique results. The applied art would not have led to the inventive compositions of the present application for at least the reason that these references fail to teach or suggest preparing a composition containing the required photochromic compound in a physiologically acceptable medium, meaning that they would not have led one of ordinary skill in the art to the claimed compositions or any of the benefits associated with these compositions.

For all of the above reasons, Applicants respectfully request reconsideration and withdrawal of the §103 rejections.

Finally, Applicants currently intend to submit a Petition under 37 CFR § 1.47(a) and a new declaration signed by Xavier Blin to address the objection to the declaration.

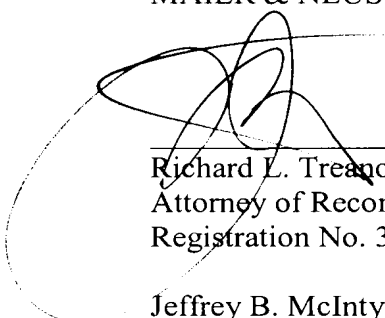
Application No. 10/687,645

Response to Office Action dated August 4, 2008

Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Richard L. Treanor
Attorney of Record
Registration No. 36,379

Jeffrey B. McIntyre
Registration No. 36,867

Customer Number

22850

Tel.: (703) 413-3000

Fax: (703) 413-2220